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9	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
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11				
12	In the Matter of the Accusation Against:	Case No. 2009-38		
13	PAUL ANDREW ASHBAUGH	Z00 p 30		
14	1472 Orpheus Avenue Encinitas, CA 92024-1760	ACCUSATION		
15	ŕ			
16	Registered Nurse License No. 216470			
17	Respondent.			
18				
19	Complainant alleges:			
20	<u>PARTIES</u>			
21	1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.			
22				
23	2. On or about July 31, 1971, the Board issued Registered Nurse License			
24	Number 216470 to Paul Andrew Ashbaugh ("Respondent"). Respondent's registered nurse			
25	license was in full force and effect at all times relevant to the charges brought herein and will			
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27	expire on May 31, 2009, unless renewed.			
28	///			

STATUTORY PROVISIONS

	3.	Business and Professions Code ("Code") section 2750 provides, in	
pertinent part,	that the	Board may discipline any licensee, including a licensee holding a	
temporary or an inactive license, for any reason provided in Article 3 (commencing with section			
2750) of the N	Jursing 1	Practice Act.	

- 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
 - 5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions . . .
- 6. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

7. Regulation 1443 states:

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

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COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

- 9. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that in and between April 2005, and April 2006, while employed as the Registered Nurse Lead in the Endoscopy and Videoscopy area of the operating room at Scripps Green Hospital, La Jolla, California, Respondent was guilty of gross negligence within the meaning of Regulation 1442, as follows:
- a. Respondent knowingly changed the established process for cleaning "bougies", a semi-critical instrument used in laparoscopic gastric by-pass and Nissen fundoplication surgeries, without notifying his manager or superiors.
- b. Respondent used a cleaning process that did not highly disinfect the bougies, thereby exposing all patients who came into contact with the bougies at potential risk of harm for contracting highly infectious blood-borne pathogens or diseases.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

10. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that in and between April 2005, and April 2006, while employed as the Registered Nurse Lead in the Endoscopy and Videoscopy area of the operating room at Scripps Green Hospital, La Jolla, California, Respondent was guilty of incompetence within the meaning of Regulation 1443, as set forth in paragraph 9 above.

^{1.} Bougies are a flexible, cylindrical instrument used for calibrating or dilating constricted areas in tubular organs.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

11. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), in that in and between April 2005, and April 2006, while employed as the Registered Nurse Lead in the Endoscopy and Videoscopy area of the operating room at Scripps Green Hospital, La Jolla, California, Respondent committed acts constituting unprofessional conduct, as set forth in paragraph 9 above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 216470, issued to Paul Andrew Ashbaugh;
- 2. Ordering Paul Andrew Ashbaugh to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

Executive Officer

State of California

3. Taking such other and further action as deemed necessary and proper.

Board of Registered Nursing

Department of Consumer Affairs

Complainant